

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

MICHAEL SMERKA,

Defendant.

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**DECISION AND ORDER**  
**11-CR-202S-9**

1. On June 26, 2013, the Defendant entered into a written plea agreement (Docket No. 223) and pled guilty to Count 1 of the Indictment (Docket No.1) charging a violation of Title 21 U.S.C. § 846 (conspiracy to possess with intent to distribute, and to distribute, cocaine).

2. On June 26, 2013, the Honorable Leslie G. Foschio, United States Magistrate Judge, filed a Report and Recommendation (Docket No. 225) recommending that Defendant's plea of guilty be accepted and the Defendant adjudicated guilty.

3. This Court has not received objections to the Report and Recommendation in accordance with 28 U.S.C. §636(b)(1) and Local Rule 59(b).

4. This Court has carefully reviewed *de novo* Judge Foschio's June 26, 2013, Report and Recommendation, the plea agreement, the Indictment, and the applicable law. Upon due consideration, this Court finds no legal or factual error in Judge Foschio's Report and Recommendation, and will accept Judge Foschio's recommendation that Defendant's plea of guilty be accepted and that the Defendant be adjudicated guilty as charged.

IT HEREBY IS ORDERED, that this Court accepts Judge Foschio's June 26, 2013, Report and Recommendation (Docket No. 225) in its entirety, including the authorities cited and the reasons given therein.

FURTHER, that the plea of guilty of Defendant Michael Smerka is accepted, and he is now adjudged guilty of Title 21 U.S.C. § 846.

SO ORDERED.

Dated: July 22, 2013  
Buffalo, New York

s/William M. Skretny  
WILLIAM M. SKRETNY  
Chief Judge  
United States District Court